IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8415 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAFULKUMAR HIMMATLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR UDAY BHATT, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on June 12, 2000, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Prafulkumar Himatlal Shah under

the provisions of the said Act.

2. The detaining authority took into consideration one offence registered against the petitioner under the Bombay Prohibition Act, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Tirmizi, learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on the 11th June, 2000 and the order detention was passed on the 12th June, 2000. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu.

3.1 So far as the registered offence is considered, it is contended by Mr. Prajapati that a representation was made on behalf of the detenu on the 8th July, 2000 (Annexure-D), wherein the contention regarding copy of the F.I.R. being incomplete was raised and a request was made to give a copy of the F.I.R. containing time of the incident to enable the detenu to make a representation. It is contended that there is non-compliance of this request affecting the right of the detenu of making an effective representation and, therefore, his continued detention is bad.

4. Mr. Uday Bhatt, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on the 8th and 9th June, 2000. The same have been verified by the detaining authority on the 11th June, 2000 and the order is passed on the 12th June, 2000. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the

witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

6. Adverting to the offence registered against the detenu, by a representation was made on behalf of the detenu on the 8th July, 2000, requesting for a copy of the F.I.R. containing the time of the incident. However, the same has not been considered. Mr. Bhatt could not show consideration of this representation and/or supply of complete copy of the F.I.R. containing the missing details of time, etc. This has affected the right of the detenu of making an effective representation. The continued detention of the detenu is, therefore, bad and the petition deserves to be allowed on this ground also.

7. In the result, the petition is allowed. The impugned order of detention dated June 12, 2000, passed against the detenu is hereby quashed. The detenu-Prafulkumar Himatlal Shah is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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